In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 833

LYON TYLER MATTHEW AND LEWIS N. HILL,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The only issue in this case is whether petitioners [1] were "bona fide residents" of a foreign country within the ambit of Section 911(a)(1) of the Internal Revenue Code of 1954—and therefore non-taxable with respect to their salaries—while working as employees of Pan American Airways at various United States Auxiliary Air Force Bases on British islands in the

[1] The cases of three separate taxpayers—the petitioners Matthew and Hill and taxpayer Holland F. Floyd—were consolidated on appeal in the court below (R. 431–434). Floyd has not petitioned for certiorari.

Atlantic Ocean,[2] which had been established as integral parts of the United States Long Range Missile Test Center, under treaties entered into between the United States and the United Kingdom (Exs. ID and Z; Pet. 25–48, 55–79).[3] Finding that the taxpayers were on the islands solely because of their employment and enjoyed very substantial "extra-territorial rights, privileges, and immunities" which "set them apart from the general community," the court below concluded that their "physical presence [was kept] from ripening into actual residence in a foreign country" within the meaning of Section 911(a)(1) (Pet. 18). Summarizing its holding, the court said (Pet. 19):

> Whether for 20 days or for 20 years, employment under the arrangement authorized by such

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[2] Petitioner Matthew, during 1956 and 1957, worked at Auxiliary Air Force Bases on San Salvador Island, Grand Bahama Island and Ascension Island. Petitioner Hill, during 1956, 1957, and 1958, worked at Auxiliary Air Force Bases on Grand Bahama Island and Mayaguana Island. Neither of these petitioners, nor taxpayer Floyd during the years involved in the case at bar, had worked at the Auxiliary Air Force Base on Antigua Island, to which petitioners make reference (Pet. 4). San Salvador, Grand Bahama, and Mayaguana are sparsely populated islands of the Bahamas; Ascension Island is part of the St. Helena group in the South Atlantic. See Pet. 12–13, n. 5.

[3] Pursuant to an order of the court below (R. 431–434), the "exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument * * * and considered by the Court with the same force and effect as if included in the printed record on review." The treaties involved are printed as appendices to the petition (Pet. 25–79); at the government's request, the other exhibits have been transmitted to this Court in order that this Court may have the full record upon which the decision of the court below was based.

> a treaty could not amount to residence *in* a foreign country, no matter how bona fide the *presence* might be.

The ruling below is plainly correct.[4] Nor is there a conflict in decisions which requires resolution. The only other case directly in point expressly follows the ruling here. *Baden* v. *United States,* 233 F. Supp. 185 (N.D. Ohio), no appeal taken. The claim of con-

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[4] While the opinion does not emphasize it, those in petitioners' situation were subjected to special restrictions while employed in the islands. The restrictions are embodied in Regulations promulgated by the United States Air Force (Exs. J and N), contracts entered into between the United States Air Force and Pan American Airways, Inc. (Exs. S and T), "Down Range Planning Briefs" prepared by the Guided Missile Range Division of Pan American Airways (Ex. AA), instructions given by Pan American Airways, Inc. to its employees of Guided Missile Range Division (Exs. CC, FF, GG, II, JJ), a "Down Range Handbook" issued by Pan American World Airways, Inc., to its employees of Guided Missile Range Division, which summarized the working conditions together with the rights and restrictions which it had imposed upon its employees who were assigned to the island missile bases (Ex. JJJ), and in a publication of United States Air Force Missile Test Center which set forth the role of the island missile bases in the security of the United States and in the development of intercontinental ballistic missiles (Ex. LLL). Each of the petitioners, as a condition of his employment did, in writing, agree to comply with and be bound by these restrictions (Ex. JJ, YY).

It is also noteworthy that the presence of each petitioner on these British islands was only co-terminus with his employment at a United States Auxiliary Air Force Base, as an employee of Pan American Airways, Inc., which employment could be terminated at will, without cause (Ex. JJ, YY), and that it was the obligation of the United States, within a reasonable time after employment was terminated, not only to provide for the employee's passage from the British island to the United States, but also "in the meantime prevent his becoming a public responsibility" of the island (Ex. Z).

flict with decisions in this Court dealing with court-martial jurisdiction over civilian employees of the Armed Forces abroad (Pet. 8–9) is frivolous. Those cases ruled that a *constitutional* bar prevented the military trial of civilians; here, the only question is whether a *statutory* tax exemption extends to certain foreign-based personnel. The issues do not touch.

The petition for certiorari should be denied.

Respectfully submitted.

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